CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Squad #2	CCRB Case #: 201608258	☐ Force ☑ Discourt. ☐ U.S. ☑ Abuse ☐ O.L. ☐ Injury

Incident Date(s) Monday, 09/26/2016 4:29 AM	Location of Incident: § 87(2)(b)		Precinct: 90	18 Mo. SOL 3/26/2018	EO SOL 3/26/2018

Date/Time CV Reported Mon, 09/26/2016 5:43 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 09/26/2016 5:43 AM

Complainant/Victim	Type	Home Address
██████████	████	██████████████

Witness(es)	Home Address
██████	██████████
██████	██████████
██████	██████████
██████	██████████
██████	██████████

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Alba	14423	942934	PSA 3
2. POM Kenneth Herz	16161	957673	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A. POM Michael Alba	Abuse: Police Officer Michael Alba entered § 87(2)(b) in Brooklyn.	████████
B. POM Kenneth Herz	Abuse: Police Officer Kenneth Herz entered § 87(2)(b) in Brooklyn..	████████
C. POM Michael Alba	Discourtesy: Police Officer Michael Alba spoke discourteously to § 87(2)(b)	████████
D. POM Michael Alba	Abuse: Police Officer Michael Alba threatened to arrest § 87(2)(b)	████████

Case Summary

On September 26, 2016, §87(2)(b)   filed this complaint with the CCRB via the Call Processing System. §87(2)(b)   chose to resolve her complaint via mediation and the case was forwarded to the Mediation Unit on October 5, 2016. The subject officer rejected mediation and the case was returned to the Investigations Unit on November 4, 2016. This delay prevented the investigation from being concluded within 90 days of the case being received.

On September 26, 2016, at 4:29 a.m., Police Officers Michael Alba and Kenneth Herz of Public Service Area 3 responded to §87(2)(b) 's home at §87(2)(b) in Brooklyn, to assist EMTs §87(2)(b) and §87(2)(b) who were unable to gain entry to the apartment. §87(2)(b) who was residing in the apartment, had called EMTs to the location to assist his wife, §87(2)(b) who was experiencing contractions and bleeding relating to her pregnancy.

§87(2)(b) was woken up by the noise of Police Officer Alba knocking on the front door and opened the door to speak with the officers. §87(2)(b) informed the officers that she did not want any males to enter the apartment because §87(2)(b) was not fully clothed. At this time, EMT §87(2)(b) entered the apartment, followed by Police Officers Alba and Herz and EMT §87(2)(b) **(Allegations A and B)**. §87(2)(b) objected to the officers entering and told them that they could not be in her home without a warrant. Police Officer Alba allegedly replied that he did not "fucking care" **(Allegation C)**. §87(2)(b) informed Police Officer Alba that her son was asleep in another room and he allegedly replied that he "did not give a fuck" **(within Allegation C)**.

Police Officer Alba conducted a check for any open warrants associated with the location and told §87(2)(b) that she could be arrested for not providing identification to verify her identity **(Allegation D).** The officers left after the female EMT confirmed that §87(2)(b) was healthy and could remain in the apartment.

No video was found in relation to this incident.

Mediation, Civil and Criminal Histories

As stated above, §87(2)(b) accepted mediation but this case was returned from the Mediation Unit after being rejected by the subject officers. A Notice of Claim inquiry was sent to the Comptroller's Office of the City of New York on January 11, 2017, to determine whether a lawsuit was filed in regards to this case. The result will be added to the case file upon receipt. §87(2) [§87(2)(b)] [§§86(1)(3)&(4)] [§87(2)(c)] (Board Review 01).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving §87(2)(b) (Board Review 02).
- Police Officer Alba has been a member of the NYPD for ten years and has had 12 prior CCRB allegations within four cases with no substantiated allegations. §87(2)(g)
- Police Officer Herz has been a member of the NYPD for two years and has had no prior CCRB allegations filed against him.

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Potential Issues

§ 87(2)(b)   s fiancé, § 87(2)(b)   who was present during this incident, missed a scheduled interview at the CCRB and did not respond to multiple contact attempts seeking to schedule him for another interview. § 87(2)(b)   and § 87(2)(b)   both missed two interview appointments at the CCRB. As a result, no verified statements were obtained from these civilians.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(b)   alleged that Police Officer Alba requested identification from herself, § 87(2) § 87(2)(b)   and her fiancé, § 87(2)(b)   § 87(2)(g)

- § 87(2)(b)   and § 87(2)(b)   both alleged that Police Officer Alba threatened to arrest them when they objected to his presence in the apartment. § 87(2)(g)

- While Police Officer Alba indicated that he spoke profanely towards § 87(2)(b) neither § 87(2)(b)   nor any other civilian indicated that profane remarks were directed towards him. § 87(2)(g)

Allegation A – Abuse of Authority: Police Officer Michael Alba entered § 87(2)(b) **, in Brooklyn.**
Allegation B – Abuse of Authority: Police Officer Kenneth Herz entered § 87(2)(b) **, in Brooklyn.**
Allegation C – Discourtesy: Police Officer Michael Alba spoke discourteously to § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Michael Alba threatened to arrest
§ 87(2)(b)

On September 26, 2016, § 87(2)(b)   filed this complaint with the CCRB via the Call Processing System. On September 27, 2016, § 87(2)(b)   provided a telephone statement to the CCRB (Board Review 03). On November 4, 2016, § 87(2)(b)   was interviewed at the CCRB. On November 23, 2016, § 87(2)(b)   provided a telephone statement to the CCRB (Board Review 04). On November 28, 2016, § 87(2)(b)   provided a telephone statement to the CCRB (Board Review 05). On November 28, 2016, § 87(2)(b)   provided a telephone statement to the CCRB (Board Review 06). On January 8, 2017, EMT § 87(2)(b)   provided a telephone statement to the CCRB (Board Review 07). On January 9, 2017, EMT § 87(2)(b)   provided a telephone statement to the CCRB (Board Review 08). On December 7, 2016, Police Officer Herz was interviewed at the CCRB. On December 8, 2016, Police Officer Alba was interviewed at the CCRB.

It is undisputed that Police Officer Alba and Police Officer Herz entered § 87(2)(b)   s apartment against her objections and that Police Officer Alba used the word "fuck" while

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speaking to her and threatened to arrest her. The specific context of the Police Officer Alba's use of the word "fuck" and his threat to arrest § 87(2)(b)   are in dispute.

§ 87(2)(b)   stated that she was unaware that § 87(2)(b)   had called for medical assistance for his wife when she was woken up by the sound of knocking at her apartment door. § 87(2)(b) § 87(2)(b)   s telephone statement indicated that she had been the person who called 911 but she denied this during her verified statement. As she walked to the door, § 87(2)(b)   asked § 87(2)(b) § 87(2)(b)   to only allow females into the apartment because she was not fully clothed. § 87(2)(b) § 87(2)(b)   opened the door and told the assembled officers and EMTs that she only wanted EMT § 87(2)(b)   a female, to enter the apartment. § 87(2)(b)   also expressed that she was unhappy that the police were present because there was no reason for them to be there.

§ 87(2)(b)   stepped aside to allow EMT § 87(2)(b)   to enter and objected when Police Officer Alba followed EMT § 87(2)(b)   inside. In her telephone statement, § 87(2)(b)   stated that Police Officer Alba "pushed" her out of his path but stated during her verified statement that he pushed the door she was holding open wider and entered the apartment without making any physical contact with her. In her telephone statement, § 87(2)(b)   stated that when she objected to officers entering, Police Officer Alba replied that they were not "fucking" leaving. In her verified statement, § 87(2)(b) § 87(2)(b)   stated that Police Officer Alba replied that he did not "fucking care" whether § 87(2)(b) wanted him in the apartment.

§ 87(2)(b)   told Police Officer Alba that it was illegal for him to enter the apartment and told him her son was sleeping. Police Officer Alba replied, "I don't give a fuck," and further stated that he "did not give a fuck" that her son was sleeping. § 87(2)(b)   stated during her telephone statement that she informed Police Officer Alba that she was going to report him to IAB and that he replied by telling her that he did not "give a fuck" who she called. § 87(2)(b)   stated during her verified statement that Police Officer Alba shrugged in reply to her stated intention to contact IAB and did not reply profanely.

§ 87(2)(b)   continued to request a warrant after the officers had entered. Police Officer Alba asked § 87(2)(b)   and § 87(2)(b)   to provide identification so he could see whether any of their names matched a list of active warrants associated with the apartment. Police Officer Alba told § 87(2)(b)   that he could arrest her for not showing him his identification. § 87(2)(b) § 87(2)(b)   declined to provide her identification to Police Officer Alba.

According to § 87(2)(b)   § 87(2)(b)   was experiencing contractions and bleeding at the time that EMTs arrived at their apartment with Police Officers Alba and Herz. § 87(2)(b)   allegedly told § 87(2)(b) § 87(2)(b)   and § 87(2)(b)   that she was feeling better and asked them to have the EMTs leave. § 87(2)(b)   and § 87(2)(b)   opened the door and spoke with the EMTs but the EMTs insisted on verifying § 87(2)(b)   s condition. § 87(2)(b)   stated that only the female EMT could enter but both EMTs and both police officers entered the apartment. § 87(2)(b)   told the officers that she did not want them in the apartment and Police Officer Alba replied "Don't tell me what the fuck to do."

§ 87(2)(b)   and § 87(2)(b)   continued to object to Police Officer Alba being in the apartment and § 87(2)(b)   told him to speak quietly because her son was in the apartment. Police Officer

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Alba replied, "Fuck your son." Police Officer Alba repeatedly stated that he needed to accompany the EMTs and told §87(2)(b) and §87(2)(b) to be quiet or he would search for warrants associated with their names. Police Officer Alba stated that he would place him and §87(2)(b) under arrest and check their identification cards. Police Officer Alba then requested identification which §87(2)(b) provided. §87(2)(b) refused to provide her identification to the officers and the officers left with the EMTs shortly after.

§87(2)(b) confirmed that he called for an ambulance but stated that he informed the 911 operator that his wife's bleeding was minor. §87(2)(b) stated that the EMTs and police officers arrived approximately ten minutes later and that he and §87(2)(b) told the officers and EMTs that only EMT §87(2)(b) could enter because his wife was not fully clothed. The female EMT entered the apartment and EMT §87(2)(b) and the two police officers followed her inside. §87(2)(b) objected to them entering and Police Officer Alba said, "I don't give a fuck." Police Officer Alba asked §87(2)(b) and §87(2)(b) for identification. §87(2) §87(2)(b) provided his identification and §87(2)(b) and §87(2)(b) refused to provide their identification. Police Officer Alba told all three of them that they could be arrested if they did not show their identification. Police Officer Alba left shortly after with the EMTs.

§87(2)(b) stated that §87(2)(b) called 911 and told the operator that she was experiencing minor bleeding. §87(2)(b) was not fully clothed and only wanted the EMTs to enter the apartment when they arrived with Police Officer Alba and Herz. §87(2)(b) was in the living room behind a folding screen and could hear §87(2)(b) tell the EMTs and police officers at the door that she only wanted EMTs to enter. §87(2)(b) heard the sound of multiple people entering the apartment and could hear the sound of the police officers' voices inside the apartment. §87(2)(b) heard Police Officer Alba say that he did "not give a fuck" that §87(2)(b) s son was sleeping. §87(2) §87(2)(b) further stated that she heard Police Officer Alba say that anyone with an open warrant should leave the apartment but did not allege hearing him make a threat of arrest.

EMT §87(2)(b) stated that he and EMT §87(2)(b) received a call for assistance for a pregnant "heavy bleeder" at §87(2)(b) s apartment. EMT §87(2)(b) stated that NYPD officers were called to the apartment when he and EMT §87(2)(b) failed to gain entry to the apartment after knocking multiple times over several minutes. §87(2)(b) answered the door and was immediately irate with the officers and insisted that no one in her apartment had called for assistance. At this time, §87(2)(b) stepped forward and stated that he called 911 for his girlfriend and the EMTs and police officers entered the apartment. EMT §87(2)(b) denied hearing any police officer use profanity and stated that §87(2)(b) used profanity while speaking with the officers and spoke in a loud voice for the duration of the incident.

§87(2)(b) mentioned that her son was asleep in a loud voice and Police Officer Alba told her to speak quietly. EMT §87(2)(b) heard Police Officer Alba say, "Calm the hell down," while speaking with §87(2)(b) and did not hear Police Officer Alba say the word, "fuck." §87(2) §87(2)(b) repeatedly told the officers that she wanted them to leave and that she did not "give a fuck" why they were there. §87(2)(b) was no receptive to the officers' explanation for why they were at her apartment. EMT §87(2)(b) corroborated EMT's §87(2)(b) description of the entry and §87(2)(b) s demeanor and confirmed hearing profanity but could not recall who made the profane remarks or the context that they were made in.

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Upon arriving at the location, Police Officer Alba reported hearing §87(2)(b) yelling from inside of the apartment and that he could hear and see the sliding glass plate in the keyhole being moved in and out of place, confirming the presence of civilians. Police Officer Alba warned the apartment's occupants that the door was about to be forcibly opened the by the fire department when §87(2)(b) opened the door and told him in a "stern" voice that he needed a warrant to enter. Police Officer Alba confirmed that he entered the apartment despite §87(2)(b) s objections, stating that it was an emergency situation.

Police Officer Alba walked around §87(2)(b) and was confronted by §87(2)(b) who told him that he was not permitted in the apartment. Police Officer Alba said, "Get the fuck out of my way," multiple times to §87(2)(b) but denied saying this to anyone else or making any other profane remarks while at the location because §87(2)(b) was the only civilians who blocked his path forward after he made entry. Police Officer Alba did not know whether he said that he didn't "fucking care" whether §87(2)(b) wanted him in the apartment and did not recall saying that he did not "give a fuck" that her son was sleeping. Police Officer Alba could not recall whether he directed any profanity at §87(2)(b) Police Officer Alba stated that §87(2)(b) and §87(2)(b) continued to speak to him in loud and aggressive voices while he was at the apartment and demanded to see warrants.

Police Officer Alba warned §87(2)(b) that she could be arrested for "getting in [his] way," demanding a warrant, and preventing him from entering her apartment to check on a bleeding patient. Police Officer Alba stated that he could have arrested §87(2)(b) for Obstructing Government Administration because she was preventing him from focusing on the situation regarding §87(2)(b) and the EMTs. Police Officer Herz confirmed that §87(2)(b) was upset that he and Police Officer Alba entered the apartment but could not recall whether Police Officer Alba used any profanity or threatened to arrest any civilian inside the apartment.

The EVENT Information for EVENT number §87(2)(b) indicates that the emergency dispatcher reported that §87(2)(b) was pregnant and "bleeding heavily." EMS responded to the location at 4:10 a.m. and requested police assistance at 4:25 a.m., citing an inability to gain entry to the incident location. Sector C, which consisted of Police Officer Alba and Police Officer Herz subsequently arrived at 4:29 a.m. (Board Review 09).

In an emergency circumstance, the courts utilize a three part test to determine the legality of a warrantless entry into a home: (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life and property; (2) The search must not be primarily motivated by intent to arrest and seize evidence; (3) There must be some reasonably basis, approximating probable cause, to associate the emergency with the area being search. People v. Dallas, 8 N.Y. 3d 890 (2007) (Board Review 10).

When an officer uses an otherwise impolite word during a stressful encounter where the officer is attempting to maintain control of the situation, the officer's "verbal slip" does not rise to the level of actionable misconduct (NYPD v. Sgt. Michelle Court, OATH Index 78667/03) (Board Review 11). According to New York State Penal Law Section 195.05, a person is guilty of obstruction of

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governmental administration when they intentionally obstruct, impair, or prevent a public servant from performing an official function by means of interference; whether or not physical force was involved (Board Review 12).

§ 87(2)(g)

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Squad: 2

Investigator: _____ _____ _____
                           Signature   Print   Date

Squad Leader: _____ _____ _____
                           Title/Signature   Print   Date

Reviewer: _____ _____ _____
                           Title/Signature   Print   Date

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